

Kieft Brothers, Inc. and General Teamsters, Chauffeurs, Salesdrivers and Helpers, Local 673 and Jaime Nieves and Construction and General Laborers, Local Union #25. Cases 13–CA–045023, 13–CA–045058, 13–CA–045062, and 13–CA–045194

June 26, 2012

DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

On March 15, 2010, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 355 NLRB 116.¹ On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010), holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

In an initial motion filed March 13, 2012, and an amended motion filed March 20, the Acting General Counsel requested, in view of the Court's decision in

New Process Steel, that a duly constituted Board review this case. The Acting General Counsel asserts that the Respondent has failed to comply with the Board's Order in this matter and that the requested action is necessary for him to seek enforcement of that Order. The Acting General Counsel's request is unopposed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 355 NLRB 116 (2010), which is incorporated herein by reference.²

² We do not, however, incorporate the personal statements of former Member Schaumber and former Chairman Liebman set forth in fns. 3, 4, 5, 6, and 8 of the two-member decision, except as noted. It is unnecessary for the Board to pass on the issues raised in those personal statements.

In affirming the judge's finding that the layoffs of the drivers violated Sec. 8(a)(5) and (1), we find it unnecessary to pass on the judge's statement that the Respondent would not have been obligated to bargain over the layoffs if it had shown that they were consistent with a past practice.

Last, we note that the Board's decision in *Davis Supermarkets*, 306 NLRB 426 (1992), cited by the judge, was later enforced by the United States Court of Appeals for the District of Columbia Circuit. See 2 F.3d 1162 (1993), cert. denied 511 U.S. 1003 (1994).

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.